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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re Marriage of KRISTINE and LARRY D. TERRILL.	B234241
KRISTINE M. TERRILL, Respondent, v. LARRY D. TERRILL, Appellant.	(Los Angeles County Super. Ct. No. BD512360)

APPEAL from a judgment of the Superior Court of Los Angeles County. Rudolph A Diaz, Judge; Marjorie S. Steinberg, Judge. Affirmed.

Rombro & Associates, S. Roger Rombro and Milinda A. Manley for Appellant.

Honey Kessler Amado and Erin Bogle for Respondent.

Larry Terrill appeals from the trial court's order in this marital dissolution action denying his motion to set aside his default on grounds of excusable neglect, from its order granting his wife Kristine interim exclusive use of the family residence and his exclusive use of another residence owned by the parties, and from the court's division of property reflected in the ensuing judgment.[1] We affirm.

BACKGROUND

The Dissolution Petition

On September 15, 2009, Kristine petitioned for dissolution of her almost 36-year marriage to Larry, alleging no minor children, and that all currently known community and quasi-community assets and debts were listed. With her petition, she filed a summons notifying Larry of the action, separate and community property declarations (Judicial Council Forms, form FL-160), and an income and expense declaration (*id*., form FL-150). On September 17, 2009, Larry signed and returned to Kristine's counsel a form acknowledging his receipt of service of the petition and summons, his receipt of the income and expense declaration, and his receipt of her schedule of assets and debts (*id*., form FL-142).

The Request To Enter Default

On January 25, 2010, Kristine filed a request to enter default, showing service by mail on Larry, with attached copies of her declarations of income and expense, and separate and community property. Larry's default was entered February 2, 2010.

Kristine's Request for OSC

On March 25, 2010, Kristine set a May 5, 2010 hearing on her requests for an order to show cause (OSC) giving her temporary sole use of the family's community property residence and giving Larry exclusive use of another residential property allegedly owned by the community. Kristine's supporting declaration alleged incidents involving verbal disagreements, "exchanged words," and conduct that disturbed her since

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[1] For the sake of clarity, we refer to the parties by their given names (as do the parties' briefs). (*In re Marriage of Cheriton* (2001) 92 Cal.App.4th 269, 280, fn. 1.)

she had filed her dissolution action, as Larry slept on the couch of the family residence and "thrashes around the house."

The Motion To Set Aside Larry's Default

Six and one-half months after Larry had acknowledged service, on April 2, 2010, his attorney moved to set aside his default. He set the motion's hearing for May 10, 2010, five days after the scheduled OSC hearing. With the motion, Larry's attorney filed a proposed response to Kristine's dissolution petition, seeking confirmation of certain items as his separate property and attaching Larry's own community property declaration (form FL-150).

Larry's declaration in support of his motion for relief from default alleges that he was shocked and devastated by Kristine's request for a divorce; that he had been under a doctor's care and had been taking unspecified medication for more than a year; and that the medication had made it difficult for him to function. He recounted having met with Kristine's attorney in late October 2009, alleging that she had told him "not to worry about the time limitations in filing a response to the petition," and that he therefore had not immediately sought legal advice. He also admitted having received a written proposal from Kristine's attorney on about January 11, 2010, for settlement of the issues, including notice that unless he responded within five days she planned to request entry of his default.

In response to that letter, Larry said, sometime in January 2010 he had retained an attorney, who had resigned within the week; and he eventually had retained his present attorneys. During "this time," (apparently the time between his October 2009 meeting with Kristine's counsel and his March 30, 2010 declaration), he alleged, "my physical office was moved requiring me to pack up everything at the old location and unpack everything at the new location all the while staying productive."

Larry's attorney further alleged that Larry's default had been entered on February 2, 2010; that Larry had retained him on February 18, 2010; and that a few weeks later, on March 2, 2010, he had requested a stipulation from Kristine's attorney to set aside the default and to file Larry's response to the dissolution petition. He also

alleged that because Kristine's attorney would not first stipulate to set aside Larry's default, he had refused to discuss settlement of the issues with her. He filed the motion when Kristine's attorney's inquired of the basis for Larry's request for relief from default.

The motion specified excusable neglect as the sole ground for Larry's relief from default. Although the motion's points and authorities suggested that Kristine's asset disclosure declaration had mischaracterized a residence (on Gibson in Redondo Beach) as community property, his motion provided no supporting evidence and did not seek relief on grounds that Kristine had failed to provide him with the property disclosures that the Family Code requires.

Kristine's declaration in response to the motion recounted Larry's history of procrastination and inability to meet deadlines, the time he had been given to obtain counsel and respond to the dissolution petition, and the fact that Larry had exhibited no impairment of understanding or inability to function during that period. Her counsel's declaration affirmed Larry's appropriate and apparently lucid behavior at their October 18, 2009 meeting, and recounted his expressed intention at that time to engage counsel and to respond to the petition on or before October 28, 2009. Since she heard nothing further from Larry, however, on November 10 she sent him a settlement offer, advising him that it would remain open for two weeks. More than four weeks later, on December 16, 2009, she advised Larry by letter that the offer would remain open for another five days, after which she intended to file a notice of default. Yet another month later, on January 19, 2010, she filed the request to enter default, which the court issued on January 25, 2010.

The declaration of Kristine's counsel confirmed that when she was contacted by Larry's counsel on March 2, 2010, she had tried to open a dialogue about settlement, but Larry's counsel had insisted that she must first agree to stipulate to set aside the default. Since Larry would not disclose the grounds on which he sought relief from his default, Kristine declined to agree. A month later, Larry moved to set aside the default.

Larry's reply to Kristine's response did not address the grounds for relief from default. Instead, still without evidence, it denied that his continued residence in the family home (arguing with Kristine and sleeping on the couch) disturbed her; denied that Kristine pays for all expenses of the family residence; and denied that the Gibson house was habitable and that it was community property.

Rulings on Motions To Set Aside Default and for OSC

On May 10, 2010, the trial court, Rudolph A. Diaz, Judge, heard and denied the motion to set aside Larry's default, expressly finding that there were no facts showing mistake, inadvertence, or excusable neglect. It retained jurisdiction, setting the matter for hearing on the division of community assets and separate property claims.

The court also heard Kristine's OSC for orders for interim sole use and possession of the family residence by Kristine, and sole use and possession of the Gibson property by Larry.[2] Relying on Kristine's moving papers and expressly not considering Larry's responsive papers, the court granted both orders, without prejudice and "on a temporary basis."[3]

Entry of Judgment

On November 8, 2010 a request for default setting for dissolution was filed on Kristine's behalf. Kristine filed her declaration for default or uncontested dissolution (initially on February 15, 2011, and again on June 13, 2011), along with a declaration confirming her attorney's service on Larry of her preliminary and final declarations of disclosure, and of income and expense, on September 11, 2009 and February 10, 2011, respectively. Kristine's declaration and attached exhibits set forth evidence of the community property status of the parties' two residential properties, and their values and encumbrances; that the parties had already divided and distributed their personal property

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[2] The parties had stipulated that the motion for OSC and to set aside Larry's default would be heard together on March 10, 2010.

[3] On June 17, 2010 this court denied Larry's petition for writ relief from the May 10, 2010 rulings. (*Terrill v. Superior Court*, 2d Civ. No. B224928.) The Supreme Court denied review on August 18, 2010.

assets between themselves, with the exception of certain car parts, accessories, and tools; that two specified vehicles were Larry's separate property, while certain other vehicles, with specified values, were the parties' community property; and that she had paid certain of the community's tax liabilities.

The court, Marjorie S. Steinberg, Judge, entered judgment of dissolution on June 13, 2011, ordering property division as set forth in an attached final decree of dissolution of marriage and division of assets, and reserving jurisdiction over all other issues, including any unaddressed community property debt, and any future spousal support. The court clerk served notice of the judgment's entry the same day.

Larry's Appeal

On July 6, 2011, Larry filed this timely appeal from the default judgment.

DISCUSSION

A. Appeal From Denial Of Larry's Request For Relief From Default

Code of Civil Procedure section 473 provides in pertinent part that "[t]he court may, upon any terms as may be just, relieve a party or his or her legal representative from a judgment, dismissal, order, or other proceeding taken against him or her through his or her mistake, inadvertence, surprise, or excusable neglect. . . ." (Code Civ. Proc., § 473, subd. (b).) Such a motion for relief from default is addressed to the trial court's sound discretion; an appellate court will not interfere without a clear showing of abuse of that discretion. (*Burnete v. La Casa Dana Apartments* (2007) 148 Cal.App.4th 1262, 1266.) The trial court's determination of controverted facts will not be disturbed. (*Zamora v. Clayborn Contracting Group, Inc.* (2002) 28 Cal.4th 249, 257-258.)

Larry contends in his opening brief that his motion to set aside his default was timely, and that the rules governing it differ from those applicable to nondissolution actions.[4] But while his opening brief asserts that he "provided more than sufficient

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[4] Larry relies on Code of Civil Procedure section 473 as the sole basis for his motion for relief from his default; he expressly disclaims any reliance on Family Code section 2121, which establishes noncompliance with financial disclosure requirements as a ground for an action or motion to set aside a judgment within one year of discovery of the

evidence" to support a finding of excusable neglect as a basis to set aside the clerk's entry of default, the argument is not accompanied by citations to any such evidence. Larry's reply brief does identify the evidence of his excusable neglect to which he apparently was referring, concerning his mental anguish, being under a doctor's care, having difficulty coping with Kristine's wish to end their marriage, and hoping for a reconciliation.[5] The citations to that evidence for the first time in his reply brief, however, is not just too late; it is also too little. Its existence could not compel the trial court's unequivocal acceptance. (*Luz v. Lopes* (1960) 55 Cal.2d 54, 62 [burden of proof is on moving party to establish grounds for setting aside default; trial court's determination of facts is conclusive on appeal].) And even if the trial court were compelled to accept all of Larry's declarations as true, it was not required to conclude from those facts that Larry had taken "'timely and adequate steps to retain counsel or to act in his own person to avoid an undesirable judgment," or that he had "'exercised such reasonable diligence as a man of ordinary prudence usually bestows upon important business"—tests ordinarily applied to determine excusable neglect justifying setting aside a default. (*Ibid*.)

The extent of Larry's mental anguish, medication, and difficulty in coping, and the extent to which those factors excused his intentional failure to fulfill his promise to file a response or even to obtain an attorney, were for the trial court to determine. Larry's cursory declaration of their existence could not preclude the trial court from finding, as it did, that he had not been misled, and that his repeated neglect in failing to respond was not excusable. Even if, as Larry argues, his evidence provided sufficient support for a trial court determination that his neglect was excusable, that would show no error or abuse of discretion. When the evidence supports the court's finding that the moving

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noncompliance. Larry eschewed such a motion or action, apparently in order to obviate the need to establish that he would materially benefit if relief were granted (Fam. Code, § 2121, subd. (b); Cal. Const., art. VI, § 13; *In re Marriage of Steiner & Hosseini* (2004) 117 Cal.App.4th 519, 522), or perhaps hoping for a second bite at the apple if necessary.

[5] Larry's motion did not contend that Kristine had failed to provide him with the property disclosures required by the Family Code.

party was not misled (and Larry does not contend otherwise), "the trial court was justified in refusing to set aside the default or the default judgment." (*Luz v. Lopes*, *supra*, 55 Cal.2d at p. 63.)[6]

Nor do the authorities relied upon in Larry's reply brief compel a different result. All but one of them affirmed trial court rulings under Code of Civil Procedure section 473, based on disputed factual determinations.[7] And in the only cited case reversing a trial court's exercise of discretion under section 473, *Karlein v. Karlein* (1951) 103 Cal.App.2d 496, the Court of Appeal held that excusable neglect was established by the fact that the default judgment of divorce had been entered against the defendant after he had been taken into custody on a "psychopathic warrant" based on his wife's affidavit. (*Id.* at pp. 497-498.)[8]

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[6] *Federer v. County of Sacramento* (1983) 141 Cal.App.3d 184, 186, does not support the proposition for which Larry cites it: that by failing to offer evidence contradicting his declaration of medical and emotional difficulties, Kristine had admitted those facts, depriving the trial court of discretion to find otherwise or to evaluate appropriate impact of those facts.

[7] See *Hambrick v. Hambrick* (1946) 77 Cal.App.2d 372, 376; *Armstrong v. Armstrong* (1947) 81 Cal.App.2d 316, 318-320; *Gregory v. Gregory* (1949) 92 Cal.App.2d 343, 345-346; *In re Marriage* of *Jacobs* (1982) 128 Cal.App.3d 273, 284; *In re Marriage of Kerry* (1984) 158 Cal.App.3d 456.

[8] Larry's opening brief had cited *Buck v. Buck* (1954) 126 Cal.App.2d 137, and *DeMello v. DeMello* (1954) 124 Cal.App.2d 135, 139, for the proposition that defaults should be set aside "without hesitation," and that trial courts' failure to do so could constitute an abuse of discretion. (See also *Smith v. Smith* (1944) 64 Cal.App.2d 415, 418-419.) But the facts of those cases are quite different from the case at hand. In *Buck v. Buck*, the Court of Appeal found an abuse of discretion in a court's denial of relief from a default judgment of annulment that involved issues of fraud, collusion, and mistake, as well as child custody and deportation. (*Buck v. Buck*, *supra*, 126 Cal.App.2d at pp. 142-143.) And in *DeMello v. DeMello*, the Court of Appeal reversed a denial of relief from default based on undisputed evidence that the defaulting defendant had been misled into believing the issues had been fully settled and no response was required. (*DeMello v. DeMello*, *supra*, 124 Cal.App.2d at pp. 140-141.)

Moreover, as Respondent notes, these cases were decided at a time when our law reflected values far different from those now applicable to proceedings for dissolution of marriage.

To the extent that Larry argues that an abuse of discretion is shown by the absence of evidence that Kristine would be prejudiced if the default were set aside, or by the unfairness of the court's later property division, his points are not well taken. It is true that a court's discretion to grant relief on one of the statutory grounds—mistake, inadvertence, surprise, or excusable neglect—is broad in the absence of prejudice to the opposing party. (*Russell v. Trans Pacific Group* (1993) 19 Cal.App.4th 1717, 1729-1730.) But that is the converse of the proposition urged, that the absence of prejudice alone requires relief. The absence of prejudice to the opposing party is not among the grounds required by Code of Civil Procedure section 473, subdivision (b), and it is not alone sufficient to entitle a party to relief from default (much less to require that result). And in a case involving domestic relations, the trial court is barred by law from granting relief from a judgment on the ground that the resulting division of marital property was or is inequitable. (Fam. Code, § 2123; *Marriage of Heggie* (2002) 99 Cal.App.4th 28, 33.)[9]

Larry's appeal from the failure to set aside his default thus amounts to little more than a suggestion that this court should put itself in the trial court's shoes. However, although it may be true, as he argues, that only slight evidence is required to uphold a trial court's finding of excusable neglect sufficient to support its determination to set aside a default, it is certainly not true that slight evidence is all that is required to justify this court in setting aside the trial court's contrary factual and discretionary determinations. The record fully supports the trial court's determination that Larry's failure to respond to the dissolution action did not result from excusable neglect, and that he failed to carry his burden of justifying his relief from default. Larry has shown no abuse of discretion in the court's refusal to grant him that relief.

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[9] Section 2123 of the Family Code provides: "Notwithstanding any other provision of this chapter, or any other law, a judgment may not be set aside simply because the court finds that it was inequitable when made, nor simply because subsequent circumstances caused the division of assets or liabilities to become inequitable, or the support to become inadequate."

B. Appeal From Disposition Of Property

Larry is entitled to appeal from the default judgment taken against him. However, following his default, his attack is confined to "jurisdictional matters and fundamental pleading defects." (*Nemeth v. Trumbull* (1963) 220 Cal.App.2d 788, 790.) A challenge to the judgment on the ground that it grants relief against him that exceeds that demanded in the complaint served upon him comes within this limitation.

A party served with a lawsuit, including a dissolution action, has a right to be apprised of the relief being sought in order to make an informed decision about whether to appear and defend. (*In re Marriage of Lippel* (1990) 51 Cal.3d 1160, 1166; *In re Marriage of Andresen* (1994) 28 Cal.App.4th 873, 878.) The relief granted to a petitioner against a defaulting respondent cannot exceed what the petitioner demanded in her petition. (Code Civ. Proc., § 580.)[10] Code of Civil Procedure section 580 applies to defaults in marital dissolution actions. (*In re Marriage of Andresen*, *supra*, 28 Cal.App.4th at p. 878, fn. 2; *Buchanan v. Buchanan* (1952) 114 Cal.App.2d 120, 121.) Therefore if, as Larry contends, the default judgment awards relief against him beyond that identified in Kristine's original petition and its attached declarations, the award would be in excess of the court's jurisdiction in violation of his fundamental right of due process. (*In re Marriage of Lippel*, *supra*, 51 Cal.3d at pp. 1160, 1166.)

Larry's appeal challenges the judgment's disposition of property, contending that the trial court abused its discretion by entering it despite two critical deficiencies in the evidence: (1) that proof is lacking that Kristine had served him with her preliminary declaration of disclosure of material facts relating to the community estate, as required by subdivision (a) of Family Code section 2336; and (2) that assets identified in her earlier property declarations are omitted from the June 13, 2011 declarations she filed in support

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[10] Section 580 provides that "[t]he relief granted to the plaintiff, if there is no answer, cannot exceed that demanded in the complaint, in the statement required by Section 425.11, or in the statement provided for by Section 425.115; but in any other case, the court may grant the plaintiff any relief consistent with the case made by the complaint and embraced within the issue." (Code Civ. Proc., § 580.)

of her request for entry of judgment. These failures by the court to follow the procedures required in either Family Code section 2336, subdivision (a), or California Rules of Court, rule 5.222(b), he claims, "was an abuse of discretion resulting in substantial harm to Larry."[11]

Neither subdivision (a) of Family Code section 2336, nor the nonexistent rule of court he cites, reveal the jurisdictional deficiencies on which Larry purports to rest his appeal. Section 2336, subdivision (a), of the Family Code requires that before the court may grant a default judgment of dissolution, the court must be provided with either a declaration estimating "the value of the assets and the debts the declarant or affiant proposes to be distributed to each party," or "a complete and accurate property declaration with the court." It does not require that any such declarations must be filed before a party's default may be taken; and it does not purport to limit the court's discretion and duty to determine the value of the parties' community property assets.

In any event, the record reflects Kristine's compliance with the requirements of Family Code section 2336, subdivision (a). With her September 11, 2009 dissolution petition she filed a preliminary declaration of disclosure (Judicial Counsel Forms, form FL-160), declarations of disclosure regarding community property and separate property (form FL-160), and an income and expense declaration (form FL-150). Larry's September 17, 2009 acknowledgement of receipt expressly states that he received service of a form FL-142 schedule of assets and debts, and a form FL-150 income and expense declaration (but does not mention the form FL-160 declarations of disclosure regarding community property and separate property).

While Larry now contends that his failure to receive Kristine's form FL-142 schedule of assets and debts is undisputed, in the trial court he made no such contention—either in response to the petition, or in his motion for relief from default. Nor does the record confirm any defect in notice to him. Subdivision (a) of Family Code

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[11] Larry's brief undoubtedly intended to cite California Rules of Court, rule 5.122(b) rather than nonexistent rule 5.222(b); but his brief does not explain how that rule was violated or how Larry was harmed.

section 2336 requires filing of *either* an estimate of the value of the assets and debts proposed to be distributed to each party, *or* an accurate property declaration—not both. And as Kristine points out, the form FL-142 schedule of assets and debts that Larry now claims he did not receive, and the form FL-160 property declaration that Larry admittedly did receive, contain virtually the same information with respect to the identity and value of the assets and the debts Kristine proposed to be distributed to each party, as required by section 2336, subdivision (a). (See 11 Witkin, Summary of Cal. Law (10th ed. 2005), Community Property, § 233, p. 844 [forms FL-142 and FL-160 call for "substantively identical" information].)[12]

Although "[a] defendant who has been served with a lawsuit has the right to be fully apprised of the relief which the complainant is seeking from him or her in order to make an informed decision about whether to appear and defend (*In re Marriage of Andresen*, *supra*, 28 Cal.App.4th at p. 878*; In re Marriage of Lippel*, *supra*, 51 Cal.3d at p. 1166), it is settled that "due process is satisfied and sufficient notice is given for [Code of Civil Procedure] section 580 purposes in marital dissolution actions by the petitioner's act of checking the boxes and inserting the information called for on the standard form dissolution petition which correspond or relate to the allegations made and the relief sought by the petitioner." (*In re Marriage of Andresen*, *supra*, 28 Cal.App.4th at p. 879.)

Here, Kristine's form dissolution petition, with checked boxes indicating her request for division of property rights and attached forms identifying the assets to be divided, satisfied the requirements of Code of Civil Procedure section 580 by putting Larry on notice of the relief she was requesting. (*In re Marriage of Andresen*, *supra*, 28 Cal.App.4th at p. 879.) Her petition asking the court to determine the parties' rights to the specified property put Larry on notice that the court would undertake to confirm to each party the separate properties to which they were entitled, and to divide the

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12 We take notice of the cited Judicial Counsel forms, as both parties have requested. (Evid. Code, § 452, subd. (e)(1).) Although Larry points out that only form FL-142 calls for the date of acquisition of each listed asset, he does not indicate any way in which that information would be of significance in this case.

community and quasi-community property equally between them—as the court was mandated by statute to do. (Fam. Code §§ 2550, 2650; *In re Marriage of Andresen, supra*, 28 Cal.App.4th at p. 880.) As the notice and acknowledgement of receipt that Larry signed on September 17, 2009 advised him, "[i]f you do not agree with what is being requested [in the served petition and accompanying documents], you must submit a completed *Response* form to the court within 30 calendar days." (Italics added.) In other words, if Larry had "desired to be heard on the subject of the valuation and division of the listed items, he should have appeared." (*In re Marriage of Andresen, supra*, 28 Cal.App.4th at pp. 879-880.)

Because Larry's default was properly entered, Kristine was entitled to judgment embodying the relief her petition had requested. (Code Civ. Proc., § 580.) The only portions of the judgment that were beyond the trial court's jurisdiction to enter would be relief that the judgment afforded Kristine (if any) that was greater in nature and amount than had been requested by her petition and its attachments. (*In re Marriage of Andresen, supra*, 28 Cal.App.4th at p. 885-886.)

The record reveals no such relief. Our review of the record discloses that Kristine's petition and initial declarations of disclosure adequately notified Larry of the nature and extent of the property that Kristine sought to be divided by the judgment, as set forth below:

Real Property. Kristine's community property declaration, filed September 15, 2009, identified the couple's real property assets as the family's Valley Drive residence in Manhattan Beach with a net market value of $617,505, and the residence on Gibson in Redondo Beach with a net market value of $479,989. She sought distribution of the Valley Drive residence (with its encumbrance) to herself, and distribution of the Gibson property (with its encumbrance) to Larry. The June 13, 2011 judgment awarded the properties to Kristine and Larry, respectively, as Kristine had requested, crediting them with net values slightly higher than Kristine's estimates (valuing the Valley Drive property at $626,243 and the Gibson property at $510,405).

Household Furniture, Furnishings, Appliances. Kristine's initial community property declaration identified furniture, electronics, and appliances with a gross value of $15,000, proposing equal distribution to the parties. The judgment finds that the parties "have previously physically divided, distributed and are each in possession of all known marital personal property, including but not limited to computers, furniture, furnishings, clothing, jewelry and personal effects."

Automobiles. Kristine's community property declaration filed September 15, 2009, identified nine automobiles, with their estimated values: Kristine sought distribution to her of two automobiles, a 2007 Audi leased by the parties, valued at $7,737; and a 1997 BMW Z3, valued at $5,000. Her declaration designated for distribution to Larry seven cars and some car parts: a 2001 BMW Z3M valued at $12,000; and two Triumph sports cars, a Chevy, a Mustang, a 1962 Porsche Coupe, a Porsche 912 Coupe, and miscellaneous parts and tools, all of unknown value. Kristine's separate property declaration of September 15, 2009 also identified, for distribution to Larry, a "Super Charger" and tools and auto parts valued at $15,000.

The judgment confirmed the Mustang and the Chevy as Larry's separate property. The remaining vehicles (plus a 1984 Nissan pickup valued at $500, and a 2009 Ford pickup acquired after the couple's separation) the court found to be community property, awarding them all to Larry. It charged responsibility for the Audi lease to Kristine.

Bank Accounts and Other Liquid Assets. Kristine's separate property declaration filed September 15, 2009 identified Wells Fargo bank accounts and other liquid investment account assets totaling $402,892, which the judgment confirms as Kristine's separate property. Her community property declaration identified bank accounts with Bank of America, UBOC, Northrop Grumman FCU, and "other assets" (identified as Schwab) with a combined value of $692,180, which the judgment does not specifically mention.

Retirement Plans. Kristine's community property declaration identified a Northrop Grumman retirement plan of unknown value in the category of "Retirement, pension profit-sharing, annuities." The judgment provides that Kristine's attorney "shall

prepare a Qualified Domestic Relations Order and serve same upon the plan administrator(s) of [Larry's] retirement plan(s)," and awarded Kristine $5,000 as Larry's share of the attorney fees for that service.[13]

Health Insurance Premiums. Kristine's income and expense declaration, filed September 15, 2009 and served on Larry, identified (among other expenses) medical, hospital, dental, and other health insurance premiums of $350 per month. The judgment ordered Larry to continue to maintain the medical coverage for Kristine through his employment medical plan.

Miscellaneous. The judgment provided that neither party would receive spousal support, but the court retained jurisdiction over the issue. It provided that (except as specifically ordered with respect to preparation of the Qualified Domestic Relations Order by Kristine's attorney) the parties would bear their own attorney fees and costs. And it expressly reserved the court's jurisdiction to divide any community debts not listed in the judgment.

Larry charges that the judgment awarded Kristine "community property as her separate property, some community property was ignored, and some of Larry's separate property was omitted from the judgment." (Capitalization omitted.) His opening brief contains a three-page list of items that he contends appeared either in Kristine's or in his own declaration of community property (filed in connection with his motion seeking relief from default), but were either unmentioned by the judgment, or the judgment found were of a different character or value.

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[13] A "Qualified Domestic Relations Order" constitutes an order made pursuant to a state domestic relations law relating to provision of rights to child support, spousal support, or marital property, which qualifies under ERISA, title 29 United States Code section 1056(d)(3)(B) & (K) and Internal Revenue Code section 414(p)(1), (8), to assign a security interest in a participant spouse's ERISA pension to a nonparticipant spouse. (*See* Hogoboom & King, Cal. Practice Guide: Family Law (The Rutter Group 2012) ¶ 10:465, p. 10-158 (rev. #1, 2009.) Larry's opening brief does not charge that this provision improperly divides the marital assets.

But Larry identified no property that the judgment awarded to Kristine that had not been identified by Kristine's petition and its attachments as being before the court for characterization, valuation, and distribution. His default precludes him from challenging the court's determinations on those issues for mere error; as discussed above, his appeal from the default judgment is confined only to the court's jurisdiction to enter the judgment it did.[14]

Larry thus had notice that the court would adjudicate the character and value of the assets and debts reflected in the judgment, as demonstrated by the identification of those assets and debts in the initial petition and its attachments. His challenge to the court's jurisdiction to enter the judgment that it did therefore fails.

C. Appeal From May 10, 2010 Order Respecting The Parties' Interim Use Of The Residential Properties

Larry purports to appeal also from the trial court's interim order, pending entry of judgment, barring Larry from the family residence under Family Code section 6321, subdivision (b), without having received evidence of harm or threats of harm by Larry. For a number of reasons, we do not reach the merits of the issue.

The issue is not properly raised

The opening brief's entire discussion of this purported issue is contained in two short sentences. It does not cite the challenged order; it does not cite relevant evidence; and it does not cite any law or authority. It identifies neither the scope of the court's discretion that it claims was abused, nor the manner in which the court is claimed to have abused that discretion. It asserts that the order damaged Larry, but it does not explain the nature or extent of the alleged injury, and it cites no evidence supporting that claim. These deficiencies alone justify disregard of the issue. (*Cahill v. San Diego Gas &*

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[14] A section of Larry's reply brief claims—for the first time (with extensive record citations that were absent from his opening brief)—that Kristine perpetrated "a fraud upon the court in obtaining her default judgment." (Capitalization omitted). However, points raised for the first time in a reply brief will not be considered. (*Reichardt v. Hoffman* (1997) 52 Cal.App.4th 754, 764.)

Electric Co. (2011) 194 Cal.App.4th 939, 956 [absence of cogent legal arguments or citation to authority allows court to treat contention as waived].)

The issue is moot

Subsequent proceedings have mooted the issue of Kristine's right to exclusive interim use of the family residence pending final disposition of the parties' property rights. "'An appellate court will not review questions which are moot and which are only of academic importance.' [Citations.] A question becomes moot when . . . events transpire that prevent the appellate court from granting any effectual relief." (*Gonzalez v.Munoz* (2007) 156 Cal.App.4th 413, 419.) Now that the dissolution judgment has distributed the family residence to Kristine as her separate property, Larry has not suggested any relief that this court could grant to restore to him a right to joint use of the home with Kristine while the dissolution was pending.

The issue is beyond the scope of this appeal

The issue is in any event beyond the scope of this appeal. The challenged order of May 10, 2010, was independently appealable. (Code Civ. Proc., § 904.1, subd. (a)(6); see Hogoboom & King, Cal. Practice Guide: Family Law, *supra*, ¶ 16:294, p. 16-87 (rev. #1, 2011) [order excluding party from dwelling is appealable under subdivision (a)(6) of Code of Civil Procedure section 904.1]; see also *In re Marriage of Skelley* (1976) 18 Cal.3d 365, 368-369 [interlocutory order dispositive of the rights of the parties in relation to collateral matter, is appealable on same basis as final judgment under Code Civ. Proc., § 904.1, subd. (a)(1)].) The time for filing an appeal from the May 10, 2010 order therefore lapsed, at the latest, in November 2010, long before Larry's July 6, 2011 Notice of Appeal. (Cal. Rules of Court, rule 8.104(a)(3) [180 days after entry of judgment or order].) In the absence of a timely appeal, this court lacks jurisdiction to address the merits of Larry's contentions with respect to this issue. (Code Civ. Proc., § 906 [no review of order from which appeal might have been taken].)

DISPOSITION

The judgment is affirmed. Respondent is to recover her costs.

NOT TO BE PUBLISHED.

CHANEY, J.

We concur:

MALLANO, P. J.

JOHNSON, J.